SUPREME COURT OF THE UNITED STATES

ROBERT J. COLPRIT, JR. :

VS. : NO. 79-247

WESTERLY SCHOOL COMMITTEE :

PETITION FOR WRIT OF CERTIORARI

Thomas J. Capalbo, Jr.
Attorney for Petitioner
Capalbo & Capalbo
90 High Street
Westerly, Rhode Island

August 13, 1979

JURISDICTIONAL STATEMENT

From a decision of the Supreme Court of the State of Rhode Island and Providence Plantations entered in this case on May 17, 1979, denying certiorari, - R. I. -, 401 A.2d 1308 (1979), Robert J. Colprit, Jr. petitions this Court for Writ of Certiorari, pursuant to Rule 22 (3), invoking this Court's jurisdiction under 28 U.S.C. §1257 (3) (1976).

The denial of certiorari by the Supreme Court of the State of Rhode Island and Providence Plantations represents the final adjudication of a completed administrative process, See Statement of the Case, infra.

QUESTION PRESENTED FOR REVIEW

Whether the refusal on the part of the Westerly School Committee to hear the appeal of the petitioner, in contravention of the School Committee's own procedures governing disciplinary exclusions, violated petitioner's Fourteenth Amendment right to Due Process of Law.

CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED

1. Amendment XIV, §1 of the Constitution of the United States provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Westerly School Committee's Regulations for Governing Disciplinary Exclusions of Students from School. See appendix at 22 (in accordance with Rule 23 (d)).

STATEMENT OF THE CASE

The within petition is brought for the purpose of securing review of a decision by the Supreme Court of the State of Rhode Island and Providence Plantations, dated May 17, 1979, denying petitioner the common-law writ of certiorari, and thus an opportunity to present his case. Such a decision was the culmination of various quasi-judicial administrative decisions rendered by state and local agencies, the history of which is as follows:

1. On April 7, 1978 the petitioner, a student enrolled at Ward High School in Westerly, Rhode Island, a school operated by the Westerly School Committee, was suspended for a period of ten days by his assistant principal.

2. On April 24, 1979 the decision of the assistant principal was affirmed by the school's principal, following a hearing wherein both parties were represented by counsel and a stenographic record was kept. Evidence presented at this hearing demonstrated that the matter before

the assistant principal was petitioner's fourth offense, there having been three prior suspensions for alleged misconduct. According to the Administrative Procedures Policy, adopted on March 21. 1977 by the respondent School Committee, fourth offense situations require that the School Committee, and not the principal, take action upon the recommendation of the Superintendent of Schools before a student is excluded from school. See appendix at 24. In the instant situation, no such action was taken by the School Committee.

3. On May 6, 1978 the petitioner requested a hearing before the Westerly School Committee to review the propriety of the principal's decision to suspend the petitioner and to consider the issue of the assistant principal's erroneous classification of petitioner's conduct as a third offense. On May 16, 1978 the petitioner was informed that his request for a hearing "had been respectfully denied since there was no provision under the Disciplinary Exclusion Policy adopted by the School Committee."

4. On May 18, 1978 the petitioner, pursuant to G.L. of Rhode Island 1956, §16-39-2, appealed to the Rhode Island Commissioner of Education the decision of the Westerly School Committee denying the requested hearing. The Commissioner concluded "that the School Committee had an obligation to render a decision affirming or reversing the decision of the principal of the high school," and thus "the School Committee (was) directed to render a decision forthwith affirming or reversing the decision of the principal of Westerly High School."

5. The respondent appealed the Commissioner's decision and on February 6, 1979 the Board of Regents for Education for the State of Rhode Island reversed the decision of the Commissioner of Education, concluding that the School Committee was not required to render a decision on the matter.

6. On March 16, 1979 the petitoner sought judicial review of the Board of Regents' action by way of a common-law writ of certiorari to the

Supreme Court of the State of Rhode Island and Providence Plantations, in compliance with that Court's prior procedural dictates in such matters. See Jacob v. Burke, 110 R.I. 661, 296 A.2d 456 (1972); Latham v. State Department of Education, 116 R.I. 245, 355 A.2d 400 (1976). Petitioner therein raised the issue of the respondent's infringement of petitioner's constitutionally guaranteed right to Due Process of Law.

7. On May 17, 1979 the Supreme Court of the State of Rhode Island and Providence Plantations denied the petitioner the common-law writ of certiorari.

ARGUMENT

1. The State of Rhode Island has granted the petitioner the right to a free public education, i.e., a vested property interest. See G.L. 1956, §16-2-2 (town and city schools required throughout the state); G.L. 1956, §16-7-15 (guaranteed per pupil expenditure); G.L. 1956, 16-19-1 (compulsory attendance). Since the State of Rhode Island chose to extend the right of education to persons of petitioner's class generally, petitioner has a "legitimate claim of entitlement" to a public education which cannot be withdrawn without Due Process of Law. Goss v. Lopez, 419 U.S. 565 (1975).

2. The respondent Westerly School Committee, through its adoption of the Rhode Island Board of Regents' Regulation for Governing Disciplinary Exclusions of Students from School on March 21, 1977, further granted persons of petitioner's class a procedural right to Due Process of Law in situations where students might be excluded from schools under the control of the said School

Committee. See appendix at 22. The Goss Court noted that interests protected by the Due Process Clause may be created and their dimensions defined by rules such as those promulgated by the School Committee. Having extended this right, the School Committee cannot retract it without violating the petitioner's right to Due Process of Law.

3. The failure of the School Committee to follow its own procedures governing Fourth Offenses, which the record clearly establishes was the case at hand, resulted in a violation of petitioner's constitutionally guaranteed right to Due Process of Law. A state or governmental body violates Due Process of Law when it fails to follow the procedural steps it has adopted for proceedings held before it. Service v. Dulles, 354 U.S. 363 (1957); United States ex rel Accardi, 347 U.S. 260 (1954); See Yellin v. United States, 374 U.S. 109 (1963); Virarelli v. Seaton, 359 U.S. 535 (1959).

4. Review of Goss v. Lopez, 419 U.S. 565

(1975), demonstrates that the School Committee need not have a hearing to decide every suspension, but the school principal may conduct an informal hearing at the time of the incident. Said Goss decision, however, did not reach the issue of whether a student has the right to appeal the erroneous decision of a principal to suspend a student when the principal failed to follow the procedural dictates of his superiors. In this case, these dictates show that the School Committee, and not the principal, was the correct tribunal to hear this matter and render a decision whether to suspend the petitioner.

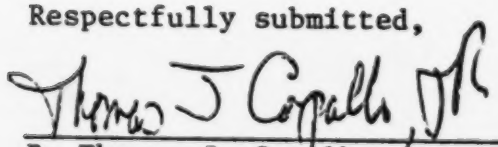
5. The Goss Court anticipated that "in unusual situations, although involving a short suspension, something more than rudimentary procedures will be required." Id. at 584. In the case at bar, there was a mistake in classification of the offense, the result of which deprived petitioner of a hearing by the School Committee. Such an "unusual situation" merits action by the School Committee to correct this

error.

6. The suspension of petitioner deprived him of a property and liberty right, as it may later limit his financial and social opportunities; thus such disciplinary action must be attended by those due process safeguards adopted by the Westerly School Committee. See Goss v. Lopez, Id. at 575, n. 7.

WHEREFORE, petitioner prays that this Court issue its Writ of Certiorari so that the Decision of the Supreme Court of the State of Rhode Island and Providence Plantations, denying certiorari, may be reviewed, and the Westerly School Committee may be directed to hear the appeal of the petitioner.

Respectfully submitted,



By Thomas J. Capalbo, Jr.
CAPALBO & CAPALBO
90 High Street
Westerly, Rhode Island 02891

APPENDIX A: OPINIONS BELOW

1. Decision of Gerald M. Dunn, Principal of Ward High School, Westerly, Rhode Island. Dated: April 26, 1978. QUOTED:

Mr. Thomas J. Capalbo
Capalbo and Capalbo
Capalbo Building
Westerly, RI 02891

Subject: Suspension of Robert J. Colprit, Jr.

I have carefully evaluated all the evidence presented at the hearing of April 24, 1978, held at Westerly High School. As a result of such an evaluation, I reaffirm the decision to suspend Mr. Robert Colprit, Jr. for a ten day period.

My decision is based on the following:

1. Robert was given notice and a hearing by Mr. Carson prior to his suspension of April 7, 1978.
2. Two specific hearings followed.
3. Evidence presented supports Mr. Carson's decision.

Sincerely,

/s/
Gerald M. Dunn
Principal

GMD: if

2. Decision of the Commissioner of Education, State of Rhode Island and Providence Plantations.
Robert J. Colprit, Jr. v. Westerly School Committee
Dated: July 6, 1978-QUOTED/Footnotes at end

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

ROBERT J. COLPRIT, JR.

VS.

WESTERLY SCHOOL COMMITTEE

D E C I S I O N

This matter was heard on June 12, 1978 upon the appeal to the Commissioner of Education of Robert J. Colprit, Jr., from a decision of the Westerly School Committee denying his request for a hearing on the decision of the principal of Westerly High School affirming his suspension from school.

The Commissioner has jurisdiction to hear the appeal by virtue of the provisions of Section 16-39-2 of the General Laws of Rhode Island, 1956, as Amended. The matter was heard by the Associate Commissioner of Education under authorization from the Commissioner.

Due notice was given to the interested parties of the time and place of the hearing. Both parties were represented by counsel. Evidence was presented, and arguments of counsel were heard, a transcript of which was made. In consideration of the arguments of counsel and the evidence presented, we find the following:

1. On March 21, 1977, the Westerly School Committee adopted a policy and rules and regulations governing the exclusion of students from school (effective April 11, 1977.)

2. Robert J. Colprit, Jr.,[1] is a student at Westerly High School who was suspended from school for a period of ten school days on April 7, 1978 by the assistant principal of Westerly High School.

3. The principal of Westerly High School wrote a letter to the appellant's attorney on April 26, 1978, the text of which reads:

> I have carefully evaluated all the evidence presented at the hearing of April 24, 1978, held at Westerly High School. As a result of such an evaluation, I reaffirm the decision to suspend Mr. Robert Colprit, Jr. for a ten day period.
>
> My decision is based on the following:
>
> 1. Robert was given notice and a hearing by Mr. Carson prior to his suspension of April 7, 1978.
> 2. Two specific hearings followed.
> 3. Evidence presented supports Mr. Carson's decision.[2]

4. By letter dated April 27, 1978, the appellant's attorney appealed the decision of the school principal to the Commissioner of Education.

5. The Associate Commissioner of Education, by letter dated May 4, 1978, acknowledged receipt of the attorney's letter to the Commissioner and informed the attorney that an appeal from the decision of the school principal should be made to the Westerly School Committee[3] and that, if the appellant were aggrieved by the decision of the School Committee, he could appeal that decision to the Commissioner of Education.[4]

6. On May 6, 1978, the appellant's attorney requested a hearing before the School Committee on the school principal's decision reaffirming the suspension of the appellant.

7. The Superintendent of Schools wrote a letter to the appellant's attorney on May 16, 1978, the text of which reads:

> By unanimous vote of the Westerly School Committee last evening I have been asked to inform you that your request for a hearing before the School Committee has been respectfully denied since there is no provision under the Disciplinary Exclusion Policy adopted by the School Committee.

8. The appellant's attorney, by letter dated May 18, 1978, appealed to the Commissioner of Education the decision of the School Committee denying the requested hearing.

The School Committee contends that it was not required either (1) by its policy and rules and regulations governing the exclusion of students from school for not more than ten days,

or (2) by the regulations of the Board of Regents for Education governing the suspension of students from school for ten days or less, or (3) by any provision of law to grant the appellant a hearing on the matter of his suspension from school for ten days.

We concur with the School Committee's contention that it was not required by rule, regulation, or law[6] to grant the appellant the requested hearing. It is our opinion, however, that the School Committee had an obligation to render a decision affirming or reversing the decision of the principal of the high school,[7] and we conclude that the School Committee rendered no such decision.[8]

Accordingly, the School Committee is directed to render a decision forthwith affirming or reversing the decision of the principal of Westerly High School.

---

[1]Robert became eighteen years of age on April 21, 1978.

[2]Mr. Carson is the assistant principal of Westerly High School.

[3]The "entire care, control and management of all public school interests" is vested by law in the school committee. (Section 16-2-18, General Laws of Rhode Island, 1956, as Amended.)

[4]A person aggrieved by a decision of a school committee may appeal the decision to the Commissioner of Education. (Section 16-39-2, General Laws of Rhode Island, 1956, as Amended.)

[5]Regulations for Governing Disciplinary Exclusions of Students from School, adopted by the Board of Regents for Education on July 8, 1976.

[6]The decision of the United States Supreme Court in Goss v. Lopez, 419 U.S. 565 (1975), appears to require that a student facing suspension for a 10 day period "be given oral or written notice of the charges against him and, if he denies them,

an explanation of the evidence the authorities have and an opportunity to present his side of the story." Id. at 581.

However, Goss v. Lopez does not mandate that the hearing should be held before the school committee. On the contrary, the Supreme Court's decision clearly envisions that the hearing will be held before school officials (e. g. principals):

> There need be no delay between the time "notice" is given and the time of the hearing. In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred.... Id. at 582.

> In holding as we do, we do not believe that we have imposed procedures on school disciplinarians which are inappropriate in a classroom setting. Instead we have imposed requirements which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions.... Id. at 583.

[7]See Findings #3.
[8]See Findings #7.

/s/
Associate Commissioner of Education

Approved: /s/
Commissioner of Education

July 6, 1978

3. Decision of the State of Rhode Island Board of Regents for Education.
Robert J. Colprit, Jr. v. Westerly School Committee
Dated: February 6, 1979 QUOTED

STATE OF RHODE ISLAND BOARD OF REGENTS FOR EDUCATION

ROBERT J. COLPRIT, JR. :
:
VS. :
:
WESTERLY SCHOOL COMMITTEE :

D E C I S I O N

This is an appeal by the School Committee from a decision of the Commissioner which held that the Committee was required to render a decision affirming or reversing a disciplinary decision made by the principal of the Westerly High School.

The Associate Commissioner, under authorization from the Commissioner, held a full hearing and made several findings of facts.

The appellant was a student at Westerly High School who was suspended from school for a period of ten days on April 7, 1978 by the assistant principal. When the student had exhausted the hearing and review process before the School Principal he sought an appeal to the Commissioner. The Associate Commissioner advised him to go first to the School Committee. The School Committee voted to deny him a hearing because its Disciplinary Exclusion Policy did not provide for appeals for such suspensions to it.

The Commissioner concluded that the School Committee had no obligation to hear the matter but that it must issue a decision affirming or revers-

ing the principal's action.

The leading case in this area of the law is Goss vs. Lopez, 419 U. S. 565 (1975). That case holds that in suspensions of ten days or less comparatively informal notice and hearings may be employed by the disciplinarian. We think that the letter and spirit of the holding in Goss, supra. would best be effectuated by allowing School Committees to curtail the hearing process in such a fashion that cases of this sort do not come to them for hearing or decision. Such a curtailment would not leave a suspended party without remedy. He or she would still have access to the courts for redress. It would, however, prevent the educational structure from being burdened with protracted processess involving relatively minor disciplinary actions. That seems to be the trust of the holding in Goss, supra.

Thus, while we concur with the Commissioner that no hearing is required before the School Committee, we conclude that the School Committee is not required to render a decision on the matter.

For the reasons stated the decision of the Commissioner is reversed.

Rhode Island Board of Regents
for Education

/s/
Norma B. Willis, Vice Chairman
Board of Regents for Education

February 6, 1979

The above decision was adopted as the recommendation of the Subcommittee for Elementary/ Secondary Education on January 22, 1979.

/s/
John J. Kane, Chairman
Subcommittee for Elementary/
Secondary Education

4. Decision of the Supreme Court of the State of Rhode Island and Providence Plantations. Robert J. Colprit, Jr. v. Weste y School Committee, No. 79-108-M. P.
Dated: May 17, 1979. QUOTED:

Supreme Court

Robert J. Colprit, Jr.	:	
	:	
v.	:	No. 79-108-M. P.
	:	
Westerly School Committee	:	

ORDER

The petition for writ of certiorari is denied.

Entered as an order of this court this 17th day of May 1979.

BY ORDER,

/s/

Walter J. Kane
Clerk

APPENDIX B:

Regulations for Governing Disciplinary Exclusions of Students from School,
Adopted: March 21, 1977
Effective April 11, 1979 per Westerly School Committee Administrative Procedures Policy.

Westerly Public Schools
Office of Superintendent

It is a policy of the Westerly School Committee that,

In accordance and compliance with the Rhode Island Board of Regents Regulations for Governing Disciplinary Exclusions of Students from School, the following rules and regulations governing student behavior will apply on the property under the control and/or direction of the Westerly School Committee and serve as the basis for excluding students from school:

I. DISCIPLINARY RULES

A student may be excluded from school if he or she:

A. Engages in behavior which disrupts the normal operation of any activity occurring on property under the control and/or direction of the Westerly School Committee
B. Engages in any form of assault upon another person
C. Possesses and/or is under the influence of any dangerous and/or illegal substance
D. Possesses any weapon
E. Smokes on school owned or rented property

F. Uses disrespectful or derogatory language
G. Exhibits dishonest behavior
H. Absents him or her self from school without parent approval which conforms to State Law
I. Leaves a school and/or class without administrative approval
J. Is tardy to school and/or class in excess of five times
K. Causes damage to school or personal property

II. Offenses against any of the above disciplinary rules will be punishable according to the following manner:

A. First Offense: the student will have a conference with the building principal or his/her designee with a letter concerning the incident sent to the student's parent or guardian, and/or one or more school priviledges will be withdrawn for a time as determined by the building principal or his/her designee, and/or the student will be detained after school for a time as determined by the building principal or his/her designee, and/or the student will be suspended from school for a period not to exceed five school days.

B. Second Offense: the student will have a conference with the building principal or his/her designee with a letter concerning the incident sent to the student's parent or guardian and the student will be detained after school for a time as determined by the building principal or his/her designee or the student will be suspended from school for a period not to exceed five school days.

C. Third Offense: the student will have a conference with the building principal or his/her designee with a letter concerning the incident sent to the student's parents or guardian and suspension from school for a period of not less than five nor more than ten school days.

D. Fourth Offense: the student will have a conference wit the building principal or his/her designee with a letter concerning the incident sent to the student's parents or guardian and the principal will send a written statement recommending exclusion of the student for a period of not less than ten school days to the Superintendent of Schools. The Superintendent will present the statement to the Westerly School Committee which will initiate action upon the recommendation within five school days.

III. Procedures. For the first three offenses where exclusion is involved the following procedures will be followed:

FOR SUSPENSION OF TEN (10) DAYS OR LESS:

If the student is to be suspended for a period of time up to ten days, the following procedure will be used:

A. That the student be given oral or written notice of the charges against him/her;
B. That if the student denies the charges, the student be given an explanation of the evidence the authorities possess;
C. That the student be given the opportunity to present his/her version; and

D. that notice and hearing generally should precede the student's removal from school since the hearing may almost immediately follow the incident but if prior notice and hearing are not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice or hearing shall follow as soon as practicable

E. That in the event a student has not attained the age of majority (18 years), notice containing the reason for suspension and the duration thereof be given to the parent or guardian. Such notice shall be given in the parent's spoken language, unless it is clearly not feasible to do so.

FOR SUSPENSION OF MORE THAN TEN (10) DAYS AND EXPULSIONS

A. Prior to suspension or expulsion, except for such time as not feasible as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice or hearing shall follow as soon as practicable, the student shall be afforded:

1. a clear, written statement of the reason for suspension or expulsion;

2. notice of the right to prompt public or private hearing, at the student's election, and the right to be represented by counsel at such hearing; and

3. if a hearing is requested, the student shall be given a prompt notice setting the time and place of such hearing, said time and place to be reasonably set so as to allow sufficient time for preparation, without undue delay.

B. In the event a student has not attained the age of majority (18 years), the parent or guardian shall be afforded the procedures stated in section 1, 2, and 3 above. Such notice shall be written in the parent's spoken language. unless it is clearly not feasible to do so.

C. The student shall be afforded a hearing at which the student shall have the right to:

1. representation and participation by counsel; and
2. cross-examination witnesses and to present witnesses in his or her behalf.

D. There shall be a complete and accurate (stenographic or electronic) record of the hearing including all exhibits. The record shall be preserved for transmission to the Commissioner of Education as soon as possible in the event of an appeal.

E. The student shall be furnished a copy of the record without cost.

F. A written decision shall be rendered, within a reasonable time based exclusively on the record detailing the reasons and factual basis therefor.

G. The student shall promptly be provided

with a copy of said decision.

H. A copy of the decision, together with the record, shall be promptly forwarded to the Commissioner of Education if there is an appeal.

IV. Although it is recognized that the enforcement of the disciplinary rules is a joint administration-staff effort, the person responsible for administering the above rules and procedures exclusive of the fourth offense procedures will be the individual building principal or his/her designee.

CERTIFICATION

This is to certify that on the 13th day of August, 1979, three (3) copies of the foregoing were mailed by United States mail, first-cless postage prepaid, in compliance with Rule 33 (1), to John J. Turano, Turano & Turano, 31 Broad Street, Westerly, Rhode Island 02891.

Thomas J. Capalbo, Jr.

SUPREME COURT OF THE UNITED STATES

ROBERT J. COLPRIT, JR. :

:

VS : NO 79-247

:

WESTERLY SCHOOL COMMITTEE :

BRIEF OF THE

WESTERLY SCHOOL COMMITTEE

John J. Turano
Attorney for
Westerly School
Committee
31 Broad Street
Westerly, Rhode Island

September 24, 1979

JURISDICTIONAL STATEMENT

The petitioner has applied for the discretionary Writ of Certiorari to review a decision of the Supreme Court of Rhode Island entered on May 17, 1979 denying a petition for a writ of certiorari - RI - 401 A2 1308 (1979). Petitioner is attempting to invoke the jurisdiction of this Court pursuant to Title 28 USC §1257(3) 1976)

> "§1257. State Courts; appeal; certiorari
>
> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: ···
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the constitution, treaties or statutes of, or Commission held or authority exercised under, the United States."

The petitioner's argument contends that the decision of a Rhode Island Supreme Court is a final judgment or decree in this case.

Rule 13(c) of the Rhode Island Rules of Appellate Procedure provide as follows:

> "(c) Order Granting or Denying Petition. Upon the granting or denying of a petition an appropriate order will be entered and the clerk shall give notice thereof to all parties. If the petition is granted, appropriate process shall issue and the cause shall thereafter proceed in accordance with these Rules; and it shall be incumbent upon the petitioner to comply with the requirements of these Rules for the preparation and transmission of the record on appeal. If the writ in question calls for review or other tribunal, allegations of fact contained in the petition which are not contained in the record under review shall not be considered to be established. A denial of a petition,

without more, is not an adjudication on the merits and such action is to be taken as without prejudice to a further application to this court or any court for the relief sought."
(underlining added)

The Rhode Island Supreme Court in its order dated May 17, 1979 denied the petitioners' petition for a writ of certiorari. This denial is without prejudice and is not a final adjudication on the merits. The order reads as follows:

"The petition for a writ of certiorari is denied."

The petitioner in this cause is free to petition our Supreme Court for a writ of certiorari and have a final adjudication on the merits.

The writ of certiorari is an extraordinary writ. Its issuance is directed to the sound discretion of the court. The petitioner in this cause applied to the Supreme Court of Rhode Island for

such a writ and it was denied without an adjudication on the merits. Our Supreme Court exercised its judicial discretion and declined to issue its writ of certiorari. The question then is, may the U. S. Supreme Court review a State Supreme Court's denial of a petition for an extraordinary writ of certiorari. It would seem that the answer is no, especially when the denial of the writ is not a final adjudication and is not without prejudice to the petitioner to file a new petition in the same cause. The issuance of a writ of certiorari is not a matter of right and lies within the sound discretion of the court. Its issuance or the Court's refusal to issue a writ of certiorari is not reviewable by definition.

QUESTION PRESENTED FOR REVIEW

"Whether the refusal on the part of the Westerly School Committee to hear the appeal of the petitioner, in contravention of the School Committee's own procedures governing disciplinary exclusions, violated petitioner's Fourteenth Amendment right to 'Due Process of Law'".

The petitioner has changed the issue before this Honorable Court. The issue presented to the Rhode Island Supreme Court was stated "Does an aggrieved petitioner have the right to appeal the decision of a High School Principal to the School Committee".

The issues raised in each court are different. In the petitioner's petition for a writ of certiorari sought to establish a right of appeal from a decision of a high school principal to the School Committee. Our Supreme Court denied that petition without prejudice. Now

the same petitioner desires to review that decision based on another question of law not raised below. That new question must be first presented to the Supreme Court of Rhode Island so that it may make a final judgment based upon its interpretation of the Rhode Island General Laws and the policy of the respondent School Committee and the Constitution of the United States before raising a substantially new issue before this Honorable Court.

The issue raised by the petitioner has now been raised for the first time before any of the prior administrative bodies. The original request to the respondent was for an appeal hearing. The petitioner desired an appeal hearing before the School Committee. The issue presented before the Commissioner of Education was whether or not the

petitioner was entitled to an appeal hearing before the School Committee. In his brief before the Board of Regents the petitioner raised the issue of an appeal. Now, before this Honorable Court, the petitioner changes his complaint and desires a review of a decision upon an issue which was never before raised or decided.

The legal principal that issues not raised before the lower tribunal cannot be raised on appeal or review by a writ of certiorari is well established in our judicial system. Only decisions made on issues raised in the lower court are subject to review.

Goss v Lopez, 418 US 565 (1975) requires a hearing by the disciplinarian prior to a suspension from school for a period of ten (10) days or less. The Court in Goss v Lopez does not require

an appellate procedure and it is well settled law that there is no common law right to an appeal, nor any constitutional right to an appeal. An appeal, if required, is a statutory right. See McKane v Durston, 153 US 684 at page 687 (1894).

> "An appeal from a judgment of conviction is not a matter of absolute right, independently of constitutional or statutory provision allowing such appeal. A review by an appellate court of the final judgment in a criminal case, however grave the offense of which the accused is convicted, was not at common law and is not now a necessary element of due process of law. It is wholly within the discretion of the State, to allow or not to allow such a review."

The decision in McKane was followed in Andrews v Swartz, 156 US 272 at 275 (1895) and District of Columbia v Clawans, 300 US 617 at 627 (1937). In the recent case of Griffin v Illinois,

351 US 12 at 18 (1956), this Court said

> "It is true that a state is not required by the Federal Constitution to provide appellate court or a right to appellate review at all...".

The extraordinary writ of certiorari is directed to the sound judicial discretion of this Honorable Court, and is granted where there are special and important reasons. Rule 19 of the Rules of the Supreme Court of the United States indicate the character of the reasons which will be considered and they are

> "(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."...

The petitioner therefore has the burden of persuading the Court that the Supreme Court of Rhode Island did not make a proper decision relating to a

federal question. In fact, the State Supreme Court has denied the petitioner's petition for a writ of certiorari without prejudice and has not made a decision on the merits, or the issue presently raised.

Secondly, the petitioner has a burden to establish that he does not have an adequate remedy at law. The petitioner has not even alleged that he does not have such a remedy! Further, the petitioner has failed to show that he does not have an adequate remedy at law. If the petitioner has been illegally suspended from school, his remedy is an action at law for deprivation of his civil rights as statutory remedy.

The respondent school committee under the authority of Title 16, Chapter 2, Section 16 of the Rhode Island General Laws as amended

"16-2-16. Suspension of pupils.

The school committee may suspend during pleasure all pupils found guilty of incorrigibly bad conduct or of violation of the school regulations."

has adopted a disciplinary exclusion policy. such policy is within the standards enunciated by the United States Supreme Court in Goss v Lopez, 419 US 565.

Therefore, the respondent respectfully requests that this Honorable Court deny the petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,

John J. Turano

John J. Turano
Turano & Turano
31 Broad Street
Westerly, Rhode Island
02891

CERTIFICATION

I, John J. Turano, hereby certify that on the 24th day of September, 1979 I sent a copy of the within Brief to Thomas J. Capalbo, Jr. at 90 High Street, Westerly, Rhode Island by United States mail, postage prepaid.

John J. Turano

John J. Turano